IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

Bail Appl..No. 6131 of 2007()

CR.NO.89/07 OF NEDUMANGAD EXCISE RANGE.

PETITIONER/2ND ACCUSED

SARASWATHY @ SARASU, D/O. GRACY,
CHERUVAKKONAM BIJU BHAVAN, PARAKKODE P.O.,
THOLICODE VILLAGE.

BY ADV. SRI.A.RAJASIMHAN

RESPONDENTS: COMPLAINANT

EXCISE INSPECTOR,
NEDUMANGAD EXCISE RANGE, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 6131 OF 2007

Dated this the 9th day of October, 2007

ORDER

Application for anticipatory bail. The petitioner – a woman, is the 2nd second accused and she faces allegations under the Kerala Abkari Act. The crux of the allegations against the petitioner is that the 1st accused was found to carry 10 litres of arrack when she was intercepted by the Excise officials. It is the case of the prosecution that the 1st accused was carrying the contraband liquor at the instance of the petitioner herein. The interrogation of the 1st accused allegedly led the detecting officer to that conclusion. The seizure mahazar and the occurrence report all do show the petitioner as the 2nd accused. The petitioner has not been arrested so far. The crime was registered on 1/8/07. Investigation is in progress. The petitioner apprehends

imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The petitioner has nothing to do with the 1st accused. She has been formerly also implicated. Earlier also, the petitioner was arrayed in many cases without any sufficient reason. Her deceased husband was involved in some abkari crimes. Merely because of that, the petitioner was arrayed as accused in some subsequent cases. She has been acquitted in all such prosecution. In the present case, allegations are raised unnecessarily and without any justification against the petitioner. The petitioner may, in these circumstances, be granted anticipatory bail, it is prayed.

3. The learned Public Prosecutor opposes the application. There are no circumstances justifying or warranting the invocation of the jurisdiction under Sec.438 of the Cr.P.C., submits the learned Public Prosecutor. At the moment, there is absolutely no reason to doubt or suspect the case of the prosecution which is supported by the statement of the 1st accused as also the entries in the contemporaneous documents

in which the petitioner figures as an accused. At any rate, this is not a fit case where the extraordinary equitable discretion under Sec.438 of the Cr.P.C. can or ought to be invoked in favour of the petitioner. The petitioner may be directed to appear before the Investigating Officer or the learned Magistrate and then seek regular bail in the ordinary course, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I am unable to perceive any features in this case which would justify the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. It is significant that there is no contention that the 1st accused or any Excise official has any animus against the petitioner for any specific reason. This, I am satisfied, is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail.

5. In the result, this bail application is dismissed; but with

the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge